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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 1991, at 10 a.m.

Chairman: Mr. JOINET

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The meeting was called to order at 10.10 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN drew attention to a number of decisions which the Sub-Commission had adopted at its private meeting on the previous day. It had decided to establish three in-session working groups in accordance with Sub-Commission decisions 1989/104, 1990/101 and 1990/125 and with Commission on Human Rights resolution 1990/64. They were the working group on detention, the working group on methods of work under items 3 and 6, and the working group on the right to leave and to return. Regional groups were requested to indicate the names of the members they proposed to serve on the three working groups.

2. Meetings would begin at the scheduled time, and another officer of the Sub-Commission would open a meeting if he himself was unable to do so. The order of speakers would be: first, members of the Sub-Commission, who could speak at any time; second, observers from intergovernmental and non-governmental organizations; and third, observers from member States replying to allegations made against their Governments. Members of the Sub-Commission were recommended to limit their statements to 10 to 15 minutes. Observers could speak for 10 minutes, and for 10 and 6 minutes on composite agenda items 5, 6 and 10. Observers from member States, making a statement equivalent to the exercise of the right of reply, would be allowed five minutes the first time and three minutes the second time. They were requested not to make accusations against another member State. Special rapporteurs would be granted a total of 35 minutes, which they could distribute as they saw fit between the introduction of their reports and their concluding remarks. When a State was directly referred to in a draft resolution, its representative would be entitled to speak for two minutes immediately before the vote. The list of speakers was open from the beginning of the session for all agenda items concurrently. Closure of the list of speakers would be announced as work proceeded. Special attention should be paid to that point, since at its previous session the Sub-Commission had had to postpone its consideration of some items owing to a lack of speakers. At the current session, if the Chairman had no speaker on his list, the debate on the item concerned would be closed and the Sub-Commission would pass on to the next item. Prospective speakers were therefore urged to put their names down in good time.

3. The time-limit for the submission of draft resolutions without financial implications would be four working days before the date scheduled for the vote. The time-limit for the submission of draft resolutions having financial implications would be six working days before the date scheduled for the vote, to enable the Secretariat to determine the cost of implementating them.

4. As Special Rapporteurs, the Sub-Commission had decided to invite Mr. Varela Quirós to speak on item 4, Mr. Mazilu on item 17 (a), Mr. Bhandare on item 14, and Mr. Suescún Monroy on item 8. Since there was no budgetary provision for the latter two Special Rapporteurs, the Secretariat would be asked to confirm the feasibility of inviting them.

5. The Sub-Commission's joint meeting with the Committee on the Elimination of Racial Discrimination (CERD) was scheduled for 19 August 1991. He, as Chairman of the Sub-Commission, would shortly be meeting the Chairman of CERD for a preliminary exchange of views on the arrangements for the meeting. There would probably not be enough time to devote one whole day to the joint meeting, which might have to be limited to half a day.

6. Members of the Sub-Commission now had before them a draft calendar for the session, on which they were invited to express their views.

7. Mrs. KSENTINI observed that the Sub-Commission could hardly close its debate on an agenda item if the relevant documentation was not yet available.

8. Mrs. DAES said that more time was needed for item 18. The protection of minorities was one of the most complex issues in the contemporary world. The Sub-Commission would have to consider Mr. Eide's report (E/CN.4/Sub.2/1991/43) and to plan strategies. Moreover, every year the item on the protection of minorities was among the last to be discussed, leaving the Sub-Commission with little time in which to consider the Working Group's report and draft resolutions.

9. In addition, consideration of item 15 should be brought forward from 28 August so that the report of the Working Group on Indigenous Populations on its ninth session (E/CN.4/Sub.2/1991/40) could receive proper attention.

10. Mr. ALFONSO MARTÍNEZ suggested that the time allowed for the representatives of member States to speak on resolutions concerning their Governments be increased to five minutes, since it was very difficult for them to make an adequate statement in only two minutes. Also, the arrangement whereby the Sub-Commission would automatically close its debate on an item if the Chairman had no names on his list of speakers was too rigid. Not all the necessary documentation might be available, and some prospective speakers might be unable to take the floor at the time concerned.

11. Mr. EIDE suggested that the meeting of the working group on the right to leave and to return be postponed for at least one week. So far only slow progress had been made. Mr. Sadi had not been able to prepare the revised version of the draft declaration, and more time was needed for informal consultations prior to the meeting.

12. He supported Mrs. Daes regarding item 18. It was very important to him, as Special Rapporteur, that there should be a full discussion of the principles to be applied. More time was therefore needed.

13. It was also important to establish an institutional link with CERD. A joint meeting lasting only half a day would be rather meaningless. In order to allow time for a full day's meeting, he suggested that the time to be devoted to the consideration of item 5 (a) be reduced.

14. Mr. DIACONU agreed with Mrs. Daes and Mr. Eide that more time was needed for item 18. Too much time was allotted to items 10 and 11. More time was also needed for item 16, the consideration of which should be brought forward

from the fourth to the third week of the session. Non-governmental organizations had many serious comments to make on the subject of contemporary forms of slavery, and they ought to be provided with an opportunity to make them to the full membership of the Sub-Commission and not just to the members of the Working Group on Contemporary Forms of Slavery.

15. Mrs. KSENTINI said that, as Chairman of the Working Group on Contemporary Forms of Slavery, she, too, would like more time for the consideration of item 16, the multiple aspects of which needed to be thoroughly studied by the Sub-Commission. In particular, the programmes of action prepared by the Working Group required serious attention. Also, the item should be brought forward in the calendar.

16. Mrs. ATTAH endorsed Mrs. Daes's comments regarding item 15 on discrimination against indigenous peoples, which should be taken up earlier in the session for the benefit of observers for non-governmental organizations. Item 18 on the protection of minorities was also very important.

17. She supported Mr. Alfonso Martínez's suggestion that observers for member States should be allowed five minutes instead of two in which to speak on draft resolutions concerning their Governments.

18. Items 10 and 11 had been given undue prominence. and a reduction of half a day for their consideration would be appropriate. Only one and a half days, however, had been allotted for the consideration of items 5 (a) and 5 (b). That time should not be reduced further, since apartheid was still a major problem.

19. Mrs. WARZAZI endorsed the remarks make by Mrs. Daes and Mr. Eide regarding the protection of minorities. The situation was particularly disturbing in the case of migrant workers, millions of whom were being exposed to a wave of racism and xenophobia. More time should therefore be devoted to item 18, perhaps by reducing the time allotted to item 6.

20. She also supported Mr. Eide's suggestion regarding the meeting of the working group on the right to leave one's country, but for a different reason - namely, that the issue was no longer as important as it had been a few years previously, when "socialist" States had refused to allow their citizens to leave their country. The whole matter needed to be reviewed in the light of current realities: for example, returning to one's country was now more of a problem than leaving it, and recently some Western countries had been obliging people to leave against their will.

21. She agreed that too much time was scheduled for items 10 and 11.

22. Mr. DESPOUY suggested that in future years the statement made by the Under-Secretary-General for Human Rights at the opening of the session be distributed as a working document.

23. For several years non-governmental organizations had shown considerable interest in the issue of human rights and disability, and they naturally wished to be present when it was discussed. He therefore hoped that the relevant report would have already been distributed by 12 August, the day on which the subject was due to be considered.

24. Item 4 was not due to be taken up until the third week of the session. That, in view of the number of further developments in fields of which the Sub-Commission had been concerned, some of them urgent and of the greatest topicality, seemed to be too late. The new developments referred to by Mrs. Warzazi were cases in point. The denial of the right to asylum and mass deportations were creating an alarming situation. Item 4 should therefore be given the important place in the calendar which it deserved.

25. The CHAIRMAN said that depending on the availability of documents the Bureau would do its best to bring forward discussion of item 4, as mentioned by Mr. Despouy.

26. Mrs. PALLEY strongly supported the view expressed by Mrs. Ksentini. The Sub-Commission had last discussed contemporary forms of slavery between 3 and 4 p.m. on 29 August 1990, and the topic was now designated for half the morning of Wednesday, 28 August at the current session. The problems involved millions of people, male and female adults as well as children. Besides child labour and debt bondage there were new developments concerning the transplant of organs and the whole question of commercialized sex in a consumer society. The jurisdiction of the Working Group overlapped with other concerns of the Sub-Commission - especially as pornography touched on freedom of expression and of the press and affected personal autonomy. Attitudes were shaped by the media and there might be clashes. More than half a morning was required. The discussion should also come earlier on the agenda.

27. She noted that only three quarters of a day had been reserved for discussing the realization of economic, social and cultural rights, and it had been decided the question on human rights dimensions of population transfer including the implantation of settlers and settlements was to be discussed under that item. That crucial question required at least one and a half hours, and might actually save time on item 6.

28. Recent events had justified her concern about chemical weapons. Her understanding was that there was to be an annual report on chemical weapons, but she had seen no reference to it in the agenda. She asked whether the Sub-Commission would receive such a report and under which agenda item it would be discussed. She expressed particular concern about the use of napalm in the Gulf war.

29. In addition she asked under what item the question of humanitarian intervention would be discussed; she wished to propose that a study should be made which would form a proper basis for humanitarian intervention by the United Nations.

30. As Mrs. Attah had rightly said, apartheid would continue to concern the Sub-Commission for a long time; however, items 5 and 6 in some senses ran together, and one and a half days might not be needed for them. Some time might be taken from items 5 and 6 and from items 10 and 11 in order to look at the important question of minorities raised by Mr. Eide and the questions raised by Mrs. Warzazi. It was true, as Mr. Despouy had said, that the right of asylum was being destroyed in Europe; and the Sub-Commission had to say something on that subject.

31. Mr. SADI said that he had not realized the magnitude of the problem until he had taken part in the Working Group on Contemporary Forms of Slavery. Hundreds of thousands of girls and women were being trafficked from developing countries to other parts of the world for prostitution. Some children had been sold for their organs to be transplanted in Europe. The Sub-Commission should give the problem a higher priority; it should be allocated more time and be moved forward to reflect the sense of urgency it deserved.

32. Mr. TIAN agreed with the proposal that only half a day should be allocated to the joint meeting with CERD, since prior to the meeting there would be consultations between the two Chairmen so that the topics for discussion would be known in advance. It was too early to think of an institutionalized mechanism for the Sub-Commission and other bodies.

33. He agreed that time could be taken from items 10 and 11 because his impression was that there were no important documents for deliberation under those items. More time could thus be given to items 15, 16 and 18.

34. He also agreed that five minutes, and not two, should be allowed to Governments to make statements before votes taken concerning them. The time given to item 5 should not be shortened. In some respects it was premature to lift sanctions on South Africa, and there was concern at the scandal of government agencies there inciting internal strife. Items 5 and 6 should therefore not be combined at the present stage. Finally, since there were many studies and reports before the Sub-Commission he did not think that new studies should be introduced at the current session.

35. Mr. SACHAR did not agree that items 10 and 11 had been given too much time; they were far too fundamental to be cut short.

36. The CHAIRMAN recalled that item 10 was the item under which there were the largest number of reports. In addition to the report by the Working Group on Detention (E/CN.4/Sub.2/1991/27) there was Mrs. Bautista's report on the the application of international standards concerning the human rights of detained juveniles (E/CN.4/Sub.2/1991/24), the fourth annual report and List of States which had proclaimed, extended or terminated a state of emergency by Mr. Despouy (E/CN.4/Sub.2/1991/28), the study by Mr. Chernichenko and Mr. Treat entitled "The right to a fair trial: current recognition and measures for its strengthening" (E/CN.4/Sub.2/1991/28) and his own report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1991/30). Items 10 and 11 had already been slightly shortened.

37. Mr. ALFONSO MARTÍNEZ considered that the time devoted to item 3 was insufficient. He entirely agreed with the view that any reduction in the attention given to racism, racial discrimination and apartheid by the Sub-Commission might be construed as implying that the problems were disappearing. Any reallocation of time could not be at the expense of those topics. He noted that about 25 hours had been allocated to items 10 and 11, whereas the item on social, economic and cultural rights had been alloted only a short time at the end of the session. Any redistribution of time would have to be based on a reduction of the time given to items 10 and 11: since the

question of the draft declaration on the protection of all persons from enforced or involuntary disappearances had been concluded, the work to be done under item 10 had really been reduced, despite the five reports mentioned by the Chairman.

38. He fully agreed with those who had spoken of the importance that should be given to the work of the pre-sessional Working Group on Contemporary Forms of Slavery. It deserved in-depth consideration and could not be properly discussed in the short time allotted.

39. The Chairman had mentioned in his opening statement the possibility of forgoing the ritual introductory statement preceding each item. The statement by the Under-Seretary-General at the current session, which had covered everything the Sub-Commission dealt with, had now made those introductory statements superfluous.

40. The question of item 19 on the right of everyone to leave any country, including his own, and to return to his country, should be postponed until the following week; it should be discussed at the next meeting, to see how progress could be made. He agreed that the problem of racial discrimination had been dealt with summarily and that the question of indigenous peoples should be given more time. With regard to the joint meeting with CERD, the fact could not be ignored that the terms of reference of that committee were quite different from those of the Sub-Commission, basically because CERD was working with States parties to a Convention and there were notable absences in ratification. The Sub-Commission had broader terms of reference which did not depend on States who had or who had not ratified a convention. There were thus major differences, and the joint meeting could therefore be made shorter. Item 4 required close consultation between the Chairman and various members of the Sub-Commission so that the Sub-Commission would have an idea of how to eliminate that recurring problem in 1992.

41. Finally, he did not think it advisable to split the discussion on item 6; an effort should be made to ensure that the thread of the discussion was not broken.

42. Mrs. WARZAZI said that she shared the concern expressed with regard to the item on the realization of economic, social and cultural rights. Last year three meetings had been devoted to that topic; at the current session the time had been shortened. The crisis in the Eastern European countries had led to general agreement that there could be no democracy without development: the number of meetings devoted to the topic should therefore be increased not reduced, since many more countries were now concerned.

43. With regard to the meetings devoted to contemporary forms of slavery, the lack of time was highly detrimental. Three years ago she had raised the question of organ transplants from children of the third world, but there had not been sufficient time for a serious study of that horrible practice, which was on the increase.

44. She entirely supported Mrs. Palley on the question of chemical weapons, on condition that if a report were produced it should include an in-depth study on the countries supplying chemical weapons and their reasons for doing so.

45. Mr. EIDE said that his argument with regard to the joint meeting with CERD was that the issues under item 5 (a) should be properly discussed at that meeting. It was therefore meaningful to see the meetings in their totality. He had suggested that if the time allotted had to be limited, the Sub-Commission should decide whether to limit the time for the joint meeting or that for item 5 (a). The total discussion time, however, should not be reduced.

46. With regard to the question of the right of anyone to leave any country, including his own, and to retu[illegible] to his country, time might be wasted if the Sub-Commission met without previous consultation. That was why he had proposed to have first an informal meeting of those who would participate in the working group in order to sort out the issues so as to make better use of the time available. There would thus be a postponement of one week but with solid preparatory work carried out in the meantime.

47. Mrs. KSENTINI stressed that special importance should continue to be placed on the question of apartheid, which would not simply disappear after a quarter of a century. It was important to examine the sequelae in the population of South Africa. Stress should also be placed on new trends such as xenophobia, and more meetings should be devoted to economic, social and cultural rights. She fully agreed with the view that a formula was needed to deal with the question of the right of asylum, which was being eroded by a tendency to turn back asylum seekers, and she also agreed with Mrs. Warzazi that the working group on item 19 should stress new trends and consider the problem of right of asylum and the sending back of those seeking asylum.

48. Mr. POSADA considered that items 10 and 11 had been allotted too much time and that much more time should be given to item 16 and a slight increase to item 19. A larger allotment should also be given to item 8 in view of its relevance to economic development.

49. Mr. SADI said that he saw little point in holding a joint meeting with CERD if such a meeting did not also consider item 5 (a) on racial discrimination.

50. Mrs. PALLEY considered that items 5 and 6 should be taken together. In cases where the discussion on an item ended early, there should be an arrangement whereby the unused time could be used by another item.

51. The CHAIRMAN recalled that, in his opening statement, he had suggested that all statements on apartheid should be consolidated under item 5 (b). The issue of apartheid was broader than the subject-matter of item 6.

52. Mr. SACHAR considered that the joint meeting should include item 6. If another body was discussing the same topic as the Sub-Commission, each should know what the other was doing in order to avoid overlap.

53. The issue of remedial sanctions must form part of the discussion on items 10 and 11. Immigrants and others were also affected by the issue of detention. It was unlikely that there would be a difference of opinion regarding substance; the question was how to meet the practical problems involved.

54. Mrs. KSENTINI considered that the Sub-Commission should continue to consider apartheid under item 6 since it was the item under which the Sub-Commission looked at policies of systematic violations of human rights.

55. Mr. van BOVEN said that there was merit in all the proposals which had been made. He would be prepared to accept whatever the officers might suggest following their study of all the comments which had been made.

56. The work of the Sub-Commission could not be reviewed in isolation from the United Nations human rights programme as a whole. The Sub-Commission was a policy body integrated into the whole field of United Nations human rights work. In that context, the Commission had asked the Sub-Commission to make a critical review of its work.

57. It was true that some informed observers regarded the Sub-Commission as a sort of runaway train, going its own way with its own agenda. Some would even prefer to see the Sub-Commission set back to the position it had occupied 30 years earlier. Such criticisms compelled the Sub-Commission to review the orientation and perspective of its work. The real question was whether the Sub-Commission was going in the right direction.

58. He wished to draw attention to three examples of how the human rights programme was qualitatively different from what it had been 30 years earlier. First, there was a new emphasis on the accountability of Governments; many supervisory bodies had been established under human rights treaties. Complaints procedures made it possible for individuals to have access to treaty bodies through the machinery of country rapporteurs and working groups.

59. The Sub-Commission was currently defending the rights and interests of vulnerable peoples. The rights of indigenous peoples had only recently been recognized by the United Nations and that aspect represented a tremendous innovation. Indigenous peoples had discovered that the United Nations was relevant to the attainment of their rights and interests. Another vulnerable group comprised exploited women and children. The working group on item 16 had made great progress in that connection. The conventions concerning the rights of migrant workers and their families and concerning refugees, asylum seekers and displaced persons were further examples of recent achievements of the programme.

60. The Sub-Commission was also deeply involved in the integration of human rights into economic and development matters. Institutions such as the World Bank and UNDP were increasingly taking human rights issues into account in their programmes. In a number of studies the Sub-Commission had stressed such dimensions through promotion of the concept of the right to development. The human rights programme had also had a long history of stressing human rights in the settlement of conflicts as for example in Namibia, Cambodia and El Salvador.

61. It was important to the work of the Sub-Commission that its working groups should continue to function.

62. A comprehensive analysis must be made before a decision could be taken as to whether in fact the Sub-Commission was a runaway train. Its working methods certainly needed improvement; the approach had already become much less academic and was currently more in touch with realities as, for example, through the mechanism of communications addressed to the Sub-Commission.

63. Mr. KHALIFA welcomed the suggestions of the Chairman for improving the Sub-Commission's working methods. He had some doubts however as to the wisdom of over-organization which could sometimes backfire.

64. He had been greatly concerned at the suggestion that the topic of apartheid should be relegated to the third week because of the unavailability of documentation. He was relieved that that eventuality had not materialized; nevertheless such a development might well have been in line with the current movement to water down the issue of apartheid and relegate it to oblivion. Apartheid continued to be alive and well and the Sub-Commission must not allow itself to be deluded that it was on the way out. He therefore agreed with all those, in particular, Mr. Alfonso Martínez and Mrs. Ksentini, who had insisted that the issue of apartheid must not be shrugged off. On the contrary, the opportunity should be taken during the current session to conduct a wide-ranging and thorough debate on apartheid so that the world could receive the signal.

65. The CHAIRMAN said that concentrating the discussion of apartheid under one item would make it possible to emphasize the aspects stressed by Mr. Khalifa. Item 5 (b) was to be given more time and its formulation broadened as a simple way of focusing attention on the issue.

66. On the issue of chemical weapons raised by Mrs. Palley, no decision had been taken as to what action should be taken to follow up the Secretary-General's report on the subject.

67. The proposals which had been made should not be regarded as a sort of manual. They were points of reference and they should be developed in a flexible manner.

68. Mr. ALFONSO MARTÍNEZ inquired what organizational measures had been taken for the joint meeting with CERD.

69. As regards the additional time to be made available to observers of States, it was his view that to add three minutes to the existing two would be too much. It would be better to provide a general framework.

70. The CHAIRMAN said that the second point raised by Mr. Alfonso Martínez would be submitted to the officers of the Sub-Commission for further consideration.

71. In reply to the first point, it was the view of the officers that the Chairman should have a preliminary discussion with the Chairman of CERD on procedural aspects of the joint meeting. The meeting would be procedural rather than substantive. It would be important as the joint meeting would be the first of its kind.

72. Mrs. ATTAH supported the proposal that half a day should be allocated for the joint meeting in view of the fact that it would be of an experimental nature.

73. Mr. ALFONSO MARTINEZ considered that members rather than officers of the two bodies should meet for some sort of a preliminary discussion. In such a group a geographical balance of members should be sought.

74. Mrs. WARZAZI disagreed with Mr. Alfonso Martínez; on the issue of racism there was no need for geographical balance. The Chairman might draw up a list of points for discussion so that members could be prepared.

75. Mr. ALFONSO MARTINEZ agreed that preliminary talks should be held between the two Chairmen as a prelude to a full meeting.

76. Mr. EIDE agreed that there should be a meeting between the two Chairmen in order to set up the framework for the joint meeting. He reminded the Sub-Commission that, during the previous year, there had already been an exchange of correspondence between the two bodies on the substance of the meeting so that some material was already available.

77. Mrs. KSENTINI agreed that the two Chairmen should meet for a preliminary discussion.

78. The CHAIRMAN announced that he would submit recommendations to the Sub-Commission following his meeting with the Chairman of CERD.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (E/CN.4/Sub.2/1990/2 and 14, E/CN.4/1991/48)

79. Mr. KEILAU (Centre for Human Rights) said that under item 3, which had been on the agenda since 1982, the Sub-Commission reviewed its working methods, programme of work and relationship with the Commission on Human Rights.

80. In connection with the item, the Sub-Commission might wish to consider the report of the Chairman of the Sub-Commission to the Commission at its forty-seventh session (E/CN.4/1991/48) and the report of the Working Group established pursuant to decision 1989/104 (E/CN.4/1990/14), both of which were available in all official languages.

81. Further, the Sub-Commission might wish to take into account Commission on Human Rights resolution 1991/56 on the work of the Sub-Commission, and Sub-Commission decision 1989/103 requesting the Secretary-General to submit to the Sub-Commission at its forty-second session a list of all studies already undertaken so as to allow the Sub-Commission to consider the possibility of drawing up a medium-term programme to ensure the participation of the greatest number of its members in that programme. That list was available in document E/CN.4/Sub.2/1990/2.

The meeting rose at 12.40 p.m.